



Oregon  
Kate Brown, Governor

Water Resources Department  
725 Summer St NE, Suite A  
Salem, OR 97301  
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September 12, 2016

VIA E-MAIL

DEBACA LAND AND CATTLE LLC  
11536 PARADISE LANE  
SCOTTSDALE, AZ 85255

SUBJECT: Water Right Transfer Application T-12173

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12173. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Central Oregonian newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice *or* 30 days after the last date of newspaper publication whichever is the later.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0892 or Joan.M.Smith@wrđ.state.or.us if I may be of assistance.

Sincerely,

Joan Smith  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12173  
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)  
Armstrong Surveying, Agent for the applicant (*via e-mail*)

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**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Transfer Application            )    PRELIMINARY DETERMINATION  
T-12173, Crook County                            )    PROPOSING APPROVAL OF  
  )    CHANGES IN POINTS OF DIVERSION  
  )    AND PLACE OF USE

**Authority**

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

**Applicant**

DEBACA LAND AND CATTLE, LLC  
11536 PARADISE LANE  
SCOTTSDALE, AZ 85255

**Findings of Fact**

1. On October 5, 2015, DEBACA LAND AND CATTLE, LLC. filed an application to change the points of diversion under Certificates 591 and 17105. The Department assigned the application number T-12173.
2. Notice of the application for transfer was published on October 13, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 6, 2016, the Department received amended application and maps; the application was amended to remove a requested point of diversion change and to include a place of use change. Discussions with Agent and the Department determined a change in the place of use was necessary to complete the desired changes.
4. On June 21, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12173 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 21, 2016, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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5. The first right to be transferred is as follows:

**Certificate:** 591 in the name of FREDERICK THOMAS JONES (confirmed by Crooked River Decree)  
**Use:** IRRIGATION of 140.8 ACRES of land, and STOCK and DOMESTIC use  
**Priority Date:** 1891  
**Rate:** A reasonable amount for domestic and stock use, and 1.76 CUBIC FEET PER SECOND for irrigation  
**Limit/Duty:** The total quantity being limited to four acre feet per acre during each year.  
**Source:** MILL CREEK, a tributary of CROOKED RIVER  
**Authorized Point of Diversion:** Not stated in certificate

**Authorized Place of Use:**

IRRIGATION, STOCK AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
13 S	17 E	WM	35	SW NE		10.6
13 S	17 E	WM	35	NW SE		30.0
13 S	17 E	WM	35	SW SE		20.0
13 S	17 E	WM	35	SE SW		18.0
14 S	17 E	WM	2	NE NW	3	26.0
14 S	17 E	WM	2	SE NW		34.0
14 S	17 E	WM	2	SW NW		2.2
Total:						140.8

6. Certificate 591 does not describe the location of the authorized point of diversion, however information is available from the applicant indicating that the authorized point of diversion is located along the Jones & Fuller Ditch, as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	17 E	WM	36	NW NW	800 FEET EAST FROM THE NW CORNER OF SECTION 36

7. Transfer Application T-12173 proposes to move the authorized point of diversion to two points of diversion. The proposed points of diversion are located approximately between 3,500 feet and 1½ miles downstream, along Mill Creek. The proposed points of diversion are described as follows:

POD	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
#1	13 S	17 E	WM	35	NW SE	35 FEET SOUTH AND 80 FEET WEST FROM THE NE CORNER OF THE NW ¼ SE ¼ OF SECTION 35
#2	14 S	17 E	WM	2	SE NW	2010 FEET SOUTH AND 2390 FEET EAST FROM THE NW CORNER OF SECTION 2

8. Transfer Application T-12173 proposes to change the place of use and the points of diversion to serve the proposed lands as follows:

IRRIGATION, STOCK AND DOMESTIC							
POD#	Twp	Rng	Mer	Sec	Q-Q	G-Lot	Acres
1	13 S	17 E	WM	35	SW NE		1.0
1	13 S	17 E	WM	35	SE SW		13.7
1	13 S	17 E	WM	35	NW SE		25.8
1	13 S	17 E	WM	35	SW SE		20.1
1	14 S	17 E	WM	2	NW NE	2	4.4

IRRIGATION, STOCK AND DOMESTIC							
POD#	Twp	Rng	Mer	Sec	Q-Q	G-Lot	Acres
1, 2	14 S	17 E	WM	2	NW NE	2	4.9
1, 2	14 S	17 E	WM	2	SW NE		2.3
1	14 S	17 E	WM	2	NE NW	3	4.8
1, 2	14 S	17 E	WM	2	NE NW	3	25.7
1, 2	14 S	17 E	WM	2	NW NW	4	10.4
1, 2	14 S	17 E	WM	2	SW NW		0.9
1, 2	14 S	17 E	WM	2	SE NW		26.8
Total:							140.8

9. The second right to be transferred is as follows:

**Certificate:** 17105 in the name of CLAUDE and AUDRA BRENNAN (perfected under Permit S-15605)  
**Use:** SUPPLEMENTAL IRRIGATION of 45.0 ACRES  
**Priority Date:** SEPTEMBER 11, 1943  
**Rate:** 0.44 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4 acre-feet per acre for each acre irrigated throughout the irrigation season; provided further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein.  
**Source:** MILL CREEK, tributary to OCHOCO CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	17 E	WM	35	SE NE	Not Described on Certificate

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	G-Lot	Acres
13 S	17 E	WM	35	SE SW		8.9
13 S	17 E	WM	35	NW SE		9.9
13 S	17 E	WM	35	SW SE		9.1
14 S	17 E	WM	2	NW NE	2	3.7
14 S	17 E	WM	2	NE NW	3	13.4
Total:						45.0

10. Certificate 17105 does not describe the measured distances of the authorized point of diversion, however information is available from the transfer map submitted with T-12173 indicating that the authorized point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	17 E	WM	35	SE NE	198 FEET NORTH AND 132 FEET EAST FROM THE SW CORNER OF THE SENE OF SECTION 35

11. Transfer Application T-12173 proposes to move the authorized point of diversion to two points of diversion. The proposed points of diversion are located approximately between 300 feet and 1 mile downstream, along Mill Creek. The proposed points of diversion are located:

POD#	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	13 S	17 E	WM	35	NW SE	35 FEET SOUTH AND 80 FEET WEST FROM THE NE CORNER OF THE NWSE OF SECTION 35
2	14 S	17 E	WM	2	SE NW	2010 FEET SOUTH AND 2390 FEET EAST FROM THE NW CORNER OF SECTION 2

12. Transfer Application T-12173 describes the proposed the place of use and the points to serve the proposed place of use as follows:

SUPPLEMENTAL IRRIGATION							
POD#	Twp	Rng	Mer	Sec	Q-Q	G-Lot	Acres
1	13 S	17 E	WM	35	SE SW		8.9
1	13 S	17 E	WM	35	NW SE		9.9
1	13 S	17 E	WM	35	SW SE		9.1
1	14 S	17 E	WM	2	NW NE	2	2.2
1, 2	14 S	17 E	WM	2	NW NE	2	1.5
1	14 S	17 E	WM	2	NE NW	3	4.4
1, 2	14 S	17 E	WM	2	NE NW	3	9.0
Total:							45.0

13. The Oregon Department of Fish and Wildlife (ODFW) has determined that fish screens are necessary at the new points of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

14. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. A pump, pipeline, ditches, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12173.
16. The proposed changes, as conditioned, would not result in enlargement of the rights.
17. The proposed changes, as conditioned, would not result in injury to other water rights.

**Determination and Proposed Action**


The change in points of diversion and place of use proposed in Transfer Application T-12173 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-12173 is approved, the final order will include the following:*

- 1. The change in points of diversion and place of use proposed in Transfer Application T-12173 are approved.*
- 2. The changes in the place of use are approved.*
- 3. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 591 and 17105 and any related decree.*
- 4. Water right Certificates 591 and 17105 are cancelled. A new certificate describing the portion of Certificate 591 not changed by this Transfer application will be issued.*
- 5. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.*
- 6. Water use measurement conditions:*
  - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.*
  - b. The water user shall maintain the meters or measuring devices in good working order.*
  - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
- 7. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

*The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
- 8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
- 9. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 12 day of Sept 2016.

  
Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by Joan Smith, if you have questions or comments referring to this document please contact me at 503-986-0892 or [Joan.M.SMITH@wrds.state.or.us](mailto:Joan.M.SMITH@wrds.state.or.us).

*Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act, 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>